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August 21, 2006

Mail Stop Appeal Brief - Patents  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

Re: Applicant: Robert M. Zeidman  
Serial No.: 09/767,819  
Examiner: Manning, John  
Docket No.: M-15589 US

Filing Date: January 22, 2001  
Group Art Unit: 2623  
Confirmation No.: 9823

Dear Sir:

Transmitted herewith are the following documents in the above-identified application:

- (1) Return Receipt Postcard;
- (2) This Transmittal Letter (1 page in duplicate); and
- (3) Appeal Brief under 37 CFR 41.37 (26 pages).

08/23/2006 CNEGA1 00000024 582257 89767819  
01 FC:2402 250.00 DA

The fee has been calculated as shown below:

## CLAIMS AS AMENDED

	Claims Remaining <u>After Amendment</u>		Highest No. Previously Paid For		Present <u>Extra</u>	Rate	Additional Fee
Total Claims	10	Minus	20	=	0	x \$25.00	\$ 00.00
Independent Claims	8	Minus	8	=	0	x \$100.00	\$ 00.00
<input checked="" type="checkbox"/> Fee for Filing a brief in support of an appeal						\$	250.00

Total additional fee for this Amendment: \$

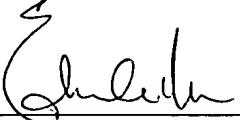
Conditional Petition for Extension of Time: If an extension of time is required for timely filing of the enclosed document(s) after all papers filed with this transmittal have been considered, an extension of time is hereby requested.

Please charge our Deposit Account No. 50-2257 in the amount of \$ 250.00

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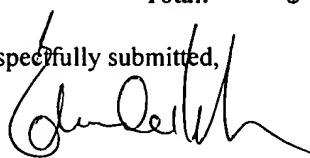
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Attorney for Applicant(s)

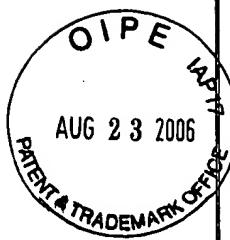
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Respectfully submitted,

  
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Application No.: 09/767,819 Filing Date: January 22, 2001  
Confirmation No.: 9823  
First Named Inventor: Robert M. Zeidman  
Examiner: Manning, John Art Unit: 2623  
Attorney Docket No.: M-15589 US

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San Jose, California  
August 21, 2006

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**APPEAL BRIEF UNDER 37 CFR § 41.37**

Dear Sir:

Appellant submits this Appeal Brief in support of the Notice of Appeal filed in this case on July 6, 2006.

The accompanying transmittal letter authorizes the Commissioner for Patents to deduct from the undersigned Attorney's deposit account the required fees for filing this Appeal Brief and any other accompanying fees.

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## I. REAL PARTY IN INTEREST

The Appellant, Robert M. Zeidman, is the real party in interest.

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## **II. RELATED APPEALS AND INTERFERENCES**

There is no prior or pending appeals, interferences and judicial proceedings known to Appellant or Appellant's legal representative which may be related to, directly affect or directly affected by, or have a bearing on the Board's decision in the pending appeal.

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### **III. STATUS OF CLAIMS**

Claims 1-10 are rejected and appealed.

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#### **IV. STATUS OF AMENDMENTS**

Subsequent to the Final Office Action of March 27, 2006 (“Final Office Action”), Appellant filed a Response to Final Office Action on May 9, 2006 (“May Response”), which was considered by the Examiner. In response, the Examiner issued an Advisory Action on June 6, 2006 (“Advisory Action”) in which the Examiner informed Appellant that the Examiner deems Appellant’s arguments in the May Response unpersuasive.

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## V. SUMMARY OF CLAIMED SUBJECT MATTER

Claim 1 recites a method for allowing content to be broadcast without commercial interruption, yet letting the company or companies sponsoring the broadcast to offer purchasing incentives to viewers. The method includes (a) receiving a broadcast with embedded information about the broadcast, the embedded information being provided to allow constructing a viewing record of the broadcast (Appellant's Specification, at page 4, lines 14-17; page 6, lines 4-10); (b) extracting and displaying content from the broadcast without commercial interruption to a viewer (Appellant's Specification, at page 4, lines 17-18; page 6, lines 22-31); (c) extracting the embedded information from the broadcast (Appellant's Specification, at page 4, lines 17-18; page 6, lines 22-31); (d) storing the embedded information (Appellant's Specification, at page 4, lines 17-18; page 6, lines 4-10); at a predetermined time, sending the stored embedded information and viewer information to a remote computer to allow the remote computer to construct the viewing record (Appellant's Specification, at page 4, lines 18-22); and (f) providing specific incentives to the viewer based on the viewing record (Appellant's Specification, at page 4, lines 22-26).

Claim 2 recites a method for allowing content to be broadcast without commercial interruption, yet letting the company or companies sponsoring the broadcast to offer purchasing incentives to viewers. The method includes (a) receiving a broadcast with information about the broadcast embedded into the broadcast at regular time periods, the information including timestamps each identifying a time slice during which the broadcast is received (Appellant's Specification, at page 4, lines 14-17; page 6, lines 4-21); (b) extracting

and displaying content from the broadcast without commercial interruption to a viewer (Appellant's Specification, at page 4, lines 17-18; page 6, lines 22-31); (c) extracting the embedded information from the broadcast (Appellant's Specification, at page 4, lines 17-18; page 6, lines 22-31); (d) incrementing counters for counting time slices during which the broadcast is received (Appellant's Specification, at page 7, lines 30-33); (e) storing the embedded information and the counter values (Appellant's Specification, at page 4, lines 17-18; page 7, lines 30-33); (f) sending the embedded information, the counter values and viewer information to a remote computer to allow a viewing time to be determined (Appellant's Specification, at page 4, lines 18-22); and (g) providing specific incentives to the viewer based on the embedded information and the viewing time (Appellant's Specification, at page 4, lines 22-26).

Claim 3 recites a method for allowing content to be broadcast without commercial interruption, yet letting the company or companies sponsoring the broadcast to offer purchasing incentives to viewers. The method includes (a) embedding information along with the broadcast content, the embedded information including information that allows a viewing time of the broadcast content to be determined (Appellant's Specification, at page 4, lines 14-17); and (b) broadcasting the content with the embedded information to a remote viewer of the content without commercial interruption (Appellant's Specification, at page 4, lines 4, lines 17-18; page 6, lines 22-31).

Claim 5 recites a method for allowing content to be broadcast without commercial interruption, yet letting the company or companies sponsoring the broadcast to offer purchasing incentives to viewers. The method includes (a) embedding information along with

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the broadcast content at regular time periods, wherein the embedded information, when collected over time, allows a viewing record of the broadcast to be determined (Appellant's Specification, at page 4, lines 14-17; page 6, lines 4-21); and (b) broadcasting the content with the embedded information without commercial interruption to a remote viewer of the content (Appellant's Specification, at page 4, lines 17-18; page 6, lines 22-31).

Claim 7 recites a method for allowing content to be broadcast without commercial interruption, yet letting the company or companies sponsoring the broadcast to offer purchasing incentives to viewers. The method includes: (a) receiving information representing a viewing record of a broadcast without commercial interruption by a remote viewer (Appellant's Specification, at page 4, lines 14-18; page 6, lines 4-21); and (b) sending specific incentives to the remote viewer based on the viewing record (Appellant's Specification, at page 4, lines 22-26).

Claim 8 recites a method for allowing content to be broadcast without commercial interruption, yet letting the company or companies sponsoring the broadcast to offer purchasing incentives to viewers. The method includes: (a) receiving information about a broadcast from a remote viewer of the broadcast without commercial interruption (Appellant's Specification, at page 4, lines 14-18; page 6, lines 4-21); (b) receiving counter values representing the number of time slices viewed by the viewer (Appellant's Specification, at page 4, lines 14-17; page 6, lines 4-21), and (c) sending specific incentives to the remote viewer determined by a viewing record of a broadcast by the remote viewer, the viewing record based on the information received and the counter values received (Appellant's Specification, at page 4, lines 22-26).

Claim 9 recites a method for allowing content to be broadcast without commercial interruption, yet letting the company or companies sponsoring the broadcast to offer purchasing incentives to viewers. The method includes (a) receiving information from a remote viewer representing a viewing record of the broadcast without commercial interruption by the remote viewer (Appellant's Specification, at page 4, lines 14-17); (b) searching a database for information about sponsors of the content of the broadcast and the incentives offered by the sponsors (Appellant's Specification, at page 4, lines 22-26); (c) creating a Web page containing links to all sponsor incentive websites and to specific incentives based on the database information and the information received from the viewer (Appellant's Specification, at page 8, lines 5-9); and (d) sending the Web page to the viewer (Appellant's Specification, at page 8, lines 9-11).

Claim 10 recites a method for allowing content to be broadcast without commercial interruption, yet letting the company or companies sponsoring the broadcast to offer purchasing incentives to viewers. The method includes: (a) receiving information about viewing of content of a broadcast without commercial interruption by a remote viewer (Appellant's Specification, at page 4, lines 14-18); (b) receiving counter values for representing the number of time slices during which the broadcast was viewed by the viewer (Appellant's Specification, at page 4, lines 14-17; page 6, lines 4-21; page 7, lines 30-33); (c) searching a database for information about sponsors of the content and the incentives offered by the sponsors (Appellant's Specification, at page 4, lines 22-26); (d) creating a Web page containing links to all sponsor incentive websites and to specific incentives based on the information resulting from the searching, the information received from the remote viewer

and the counter values (Appellant's Specification, at page 8, lines 5-9); and (e) sending the Web page to the viewer (Appellant's Specification, at page 8, lines 9-11).

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## **VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL**

Appellant presents for review (i) the Examiner's rejection of Claims 1-8 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent 6,766,524 ("Matheny"); and (ii) the Examiner's rejection of Claims 9-10 under 35 U.S.C. § 103(a) as being unpatentable over Matheny.

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## **VII. ARGUMENT**

### **(i) The Examiner's rejection of Claims 1-8 under 35 U.S.C. § 102(e) as being anticipated by Matheny**

The Examiner first raised his rejection of Claims 1-8 under 35 U.S.C. § 102(e) as being anticipated by Matheny in an Office Action of October 4, 2005. In response, Appellant explained, in the Amendment of December 19, 2005 ("December Amendment") that Appellant's Specification teaches that commercial interruptions during broadcast reduce both the viewers' viewing pleasure and the effectiveness of the advertising, and thus Appellant's Claims 1-8 each recite a method that allows the broadcast to be shown without commercial interruption, while still allowing the commercial sponsors to capture the attention of their intended audience. For example, Claim 1 recites:

1. A method for allowing content to be broadcast without commercial interruption, yet letting the company or companies sponsoring the broadcast to offer purchasing incentives to viewers, the method comprising:

a. receiving a broadcast with embedded information about the broadcast, said embedded information being provided to allow constructing a viewing record of the broadcast;

b. extracting and displaying content from said broadcast without commercial interruption to a viewer;

c. extracting said embedded information from said broadcast;

d. storing said embedded information;

e. at a predetermined time, sending said stored embedded information and viewer information to

a remote computer to allow said remote computer to construct said viewing record; and

f. providing specific incentives to the viewer based on said viewing record.

In the December Amendment, Appellant also pointed out that, not only does Matheny not disclose or suggest Appellant's Claims 1-8, Matheny teaches away from Claims 1-8 by teaching commercial interruptions. Specifically, Matheny teaches not only commercial interruptions, but a particularly intrusive type of commercial interruptions – i.e., one which requires the viewer to interact with it in order to receive a reward:

For illustrative purposes, receiver 215 depicts a broadcast television commercial sponsored by a cruise line and advertising an Alaskan cruise. In accordance with the invention, television set 235 additionally displays a reward notice 260--in this case an interactive icon--alerting viewers of the possibility of receiving a reward for watching the depicted commercial. In one embodiment, viewers select reward notice 260 to participate in the interactive commercial.

\* \* \*

The possibility of receiving a reward will entice some viewers to claim rewards without bothering to watch the associated commercial. Thus, in accordance with one embodiment of the invention, viewers must provide some feedback to indicate that they watched the commercial before they are entitled to a reward. In the example of FIG. 2, set-top box 245 presents the viewer with a test question 265 at or near the end to the commercial. The question is based upon the content of the commercial, so viewers who watch the commercial are able to answer the question correctly. .... Entering the correct answer in field 270 entitles a viewer to the offered reward.

(Matheny, at col. 3, lines 1-30)

Appellant therefore concluded that, because Matheny teaches away from Claims 1-8, Claims 1-8 are each allowable over Matheny. In response in the Final Office Action, the

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Examiner states:

... The system of Matheny may be used in conjunction with commercial, but the presence of commercials is not required. Assuming arguendo that commercials are present in the broadcasting, the system is operable after the end of the first commercial and before the end of the second commercial. Therefore, for the specified broadcast segment, content from the broadcast is extracted and displayed without commercial interruption, while maintaining the complete functionality of the system.

Thus, Appellant pointed out in the May Response that the Examiner's arguments are inconsistent with his construction of Matheny's "reward" and "query" trigger messages as Claim 1's "embedded information being provided to allow constructing a viewing record of the broadcast." Specifically, as taught in Matheny's col. 6, lines 47-54, these triggers interrupt the viewer by "[displaying] some icon (step 415), or otherwise notifies viewers of the possibilities of receiving a reward for interacting with the program." Therefore, the Examiner's construction also requires the conclusion that these triggers constitute a message of a commercial nature from a program sponsor provided at the same time as the displaying of the content, so that Matheny teaches away from Claim 1's "extracting and displaying content from said broadcast without commercial interruption to a viewer" limitation. Accordingly, Appellant concluded in the May Response that the Examiner failed to show that Matheny anticipates Applicant's Claims 1-8.

In response to Appellants' arguments, the Examiner states in the Advisory Action:

... The triggers and icon do not interrupt the displayed program. The continuity of the program is never broken (i.e., the program is not paused until there is input from the user). Figure 4 shows that the only "action" taken to no user selection is ignoring the query trigger. The system of Matheny works

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with or with out commercial interruption. More specifically, there is not commercial interruption involved with extracting and displaying either (program) content or the embedded information (See col. 1, line 67 – col. 2, line 4, col. 4, lines 27-57).

Appellant respectfully submits that the Examiner's arguments are contradicted by Matheny's teachings at page 5, line 50 to page 6, line 25, in which Matheny teaches displaying the reward triggers – a visual interruption – early in the program, and in increasing frequencies towards the end of the program:

... The content creator then embeds the reward and query triggers into a data service channel of a video recording (step 330). For example, the reward and query triggers might be embedded into a data service channel of a recorded television program.

... Having prepared the program, including the triggers, the content creator delivers the program to a broadcaster. The broadcaster then broadcasts the program. Because the reward trigger precedes the query trigger in the program, broadcasting the program causes the reward trigger to be broadcast first (step 335). This typically occurs near the beginning of the program, allowing viewers time to respond. Early notice can be especially important for short programs, such as 15 or 30-second commercials. In one embodiment, reward triggers are sent every five seconds or so, so that viewers tuning in late to the corresponding program will have the opportunity to participate. Finally, after a time sufficient to allow viewers to respond to the reward trigger, the broadcaster broadcasts the query trigger to participating viewers (step 340).

Accordingly, Appellant respectfully submits that the Examiner's arguments are without merits and Claims 1-8 are each allowable over Matheny. The Examiner's rejection of Claims 1-8 under 35 U.S.C. § 102(e) should therefore be reversed.

(ii) The Examiner's rejection of Claims 9-10 under 35 U.S.C. § 103(a) as being unpatentable over Matheny.

As in each of Claims 1-8, Claims 9 and 10 each recite broadcast without commercial interruption:

9. A method for allowing content to be broadcast without commercial interruption, yet letting the company or companies sponsoring the broadcast to offer purchasing incentives to viewers, the method comprising:

a. receiving information from a remote viewer representing a viewing record of said broadcast without commercial interruption by said remote viewer;

\* \* \*

d. sending said Web page to said viewer.

10. A method for allowing content to be broadcast without commercial interruption, yet letting the company or companies sponsoring the broadcast to offer purchasing incentives to viewers, the method comprising:

a. receiving information about viewing of content of a broadcast without commercial interruption by a remote viewer;

\* \* \*

e. sending said Web page to said viewer.

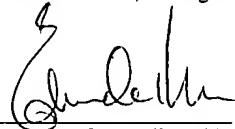
For the reasons already explained above, Matheny teaches away from Appellant's invention by teaching embedded interactive commercials during broadcast and including commercial interruptions. Accordingly, Claims 9-10 are each likewise allowable over Matheny. The Examiner's rejection of Claims 9-10 should therefore be reversed.

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## CONCLUSION

Claims 1-10 are allowable. Appellant therefore requests that the Examiner's rejections of these claims under 35 U.S.C. §§ 102(e) and 103(a) over Matheny be reversed. If the Board or the Examiner has any question regarding the above, the Board or the Examiner is respectfully requested to telephone the undersigned Attorney for Applicant at 408-392-9250.

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on August 21, 2006.



Attorney for Applicant(s)

8/21/2006

Date of Signature

Respectfully submitted,



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## CLAIMS APPENDIX A

1. A method for allowing content to be broadcast without commercial interruption, yet letting the company or companies sponsoring the broadcast to offer purchasing incentives to viewers, the method comprising:
  - a. receiving a broadcast with embedded information about the broadcast, said embedded information being provided to allow constructing a viewing record of the broadcast;
  - b. extracting and displaying content from said broadcast without commercial interruption to a viewer;
  - c. extracting said embedded information from said broadcast;
  - d. storing said embedded information;
  - e. at a predetermined time, sending said stored embedded information and viewer information to a remote computer to allow said remote computer to construct said viewing record; and
  - f. providing specific incentives to the viewer based on said viewing record.

2. A method for allowing content to be broadcast without commercial interruption, yet letting the company or companies sponsoring the broadcast to offer purchasing incentives to viewers, the method comprising:

- a. receiving a broadcast with information about the broadcast embedded into the broadcast at regular time periods, said information including timestamps each identifying a time slice during which the broadcast is received;
- b. extracting and displaying content from said broadcast without commercial interruption to a viewer;
- c. extracting said embedded information from said broadcast;
- d. incrementing counters for counting time slices during which said broadcast is received;
- e. storing said embedded information and said counter values;
- f. sending said embedded information, said counter values and viewer information to a remote computer to allow a viewing time to be determined; and
- g. providing specific incentives to the viewer based on said embedded information and said viewing time.

3. A method for allowing content to be broadcast without commercial interruption, yet letting the company or companies sponsoring the broadcast to offer purchasing incentives to viewers, the method comprising

- a. embedding information along with the broadcast content, said embedded information including information that allows a viewing time of said broadcast content to be determined; and

b. broadcasting said content with said embedded information to a remote viewer of the content without commercial interruption.

4. The method of Claim 3 further comprising:

a. obtaining stored embedded information from said viewer so as to determine said viewing time; and

b. sending specific incentives to said viewer based on said viewing time.

5. A method for allowing content to be broadcast without commercial interruption, yet letting the company or companies sponsoring the broadcast to offer purchasing incentives to viewers, the method comprising:

a. embedding information along with the broadcast content at regular time periods, wherein said embedded information, when collected over time, allows a viewing record of the broadcast to be determined; and

b. broadcasting said content with said embedded information without commercial interruption to a remote viewer of the content.

6. The method of Claim 5 further comprising

a. providing collected embedded information from said viewer about said broadcast at a predetermined time point;

b. from said collected embedded information, determining a number of time slices during which the broadcast is received by the viewer; and

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- c. sending specific incentives to said viewer based on said time slices.
- 7. A method for allowing content to be broadcast without commercial interruption, yet letting the company or companies sponsoring the broadcast to offer purchasing incentives to viewers, the method comprising:
  - a. receiving information representing a viewing record of a broadcast without commercial interruption by a remote viewer; and
  - b. sending specific incentives to the remote viewer based on said viewing record.
- 8. A method for allowing content to be broadcast without commercial interruption, yet letting the company or companies sponsoring the broadcast to offer purchasing incentives to viewers, the method comprising:
  - a. receiving information about a broadcast from a remote viewer of said broadcast without commercial interruption;
  - b. receiving counter values representing the number of time slices viewed by the viewer, and
  - c. sending specific incentives to the remote viewer determined by a viewing record of a broadcast by said remote viewer, said viewing record based on said information received and said counter values received.

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9. A method for allowing content to be broadcast without commercial interruption, yet letting the company or companies sponsoring the broadcast to offer purchasing incentives to viewers, the method comprising:

- a. receiving information from a remote viewer representing a viewing record of said broadcast without commercial interruption by said remote viewer;
- b. searching a database for information about sponsors of the content of said broadcast and the incentives offered by said sponsors;
- c. creating a Web page containing links to all sponsor incentive websites and to specific incentives based on said database information and said information received from said viewer; and
- d. sending said Web page to said viewer.

10. A method for allowing content to be broadcast without commercial interruption, yet letting the company or companies sponsoring the broadcast to offer purchasing incentives to viewers, the method comprising:

- a. receiving information about viewing of content of a broadcast without commercial interruption by a remote viewer;
- b. receiving counter values for representing the number of time slices during which the broadcast was viewed by said viewer;

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- c. searching a database for information about sponsors of the content and the incentives offered by said sponsors;
- d. creating a Web page containing links to all sponsor incentive websites and to specific incentives based on said information resulting from said searching, said information received from said remote viewer and said counter values; and
- e. sending said Web page to said viewer.

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## **EVIDENCE APPENDIX**

None.

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**RELATED PROCEEDINGS APPENDIX**

None.

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